

1 BEFORE THE
2 ILLINOIS COMMERCE COMMISSION

3 BENCH SESSION
4 (PUBLIC UTILITY)

5
6 Springfield, Illinois

7 Thursday, February 21, 2013

8
9 Met, pursuant to notice, at 10:30 a.m.
10 in the Audiovisual Conference Room, Second Floor,
11 Leland Building, 527 East Capitol Avenue,
12 Springfield, Illinois.

13
14 PRESENT:

15 MR. DOUGLAS P. SCOTT, Chairman

16 MS. ERIN M. O'CONNELL-DIAZ, Commissioner
17 (Via audiovisual conference)

18 MR. JOHN T. COLGAN, Commissioner

19 MS. ANN McCABE, Commissioner
 (Via audiovisual conference)

20 MR. MIGUEL DEL VALLE, Acting Commissioner

21 L.A. COURT REPORTERS
22 By: Deborah A. Krotz, Reporter
 CSR #084-001848

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PROCEEDINGS

CHAIRMAN SCOTT: Pursuant to the provisions of the Open Meetings Act, I now convene a regularly-scheduled Bench Session of the Illinois Commerce Commission. With me in Springfield are Commissioner Colgan and Acting Commissioner Del Valle. With us in Chicago are Commissioner O'Connell-Diaz and Commissioner McCabe. I am Chairman Scott. We have a quorum.

Before moving into the agenda, according to Section 1700.10 of Title II of the Administrative Code, this is the time we allow members of the public to address the Commission. Members of the public wishing to address the Commission must notify the Chief Clerk's Office at least 24 hours prior to Commission meetings.

According to the Chief Clerk's Office, we have no public requests to speak at today's Bench Session.

(The Transportation portion of the proceedings was held at this time and is contained in a separate

1 transcript.)

2 CHAIRMAN SCOTT: Moving on to the Public
3 Utility agenda, we'll begin with the approval of
4 minutes from our January 29th Regular Open Meeting.

5 I understand amendments have been
6 forwarded. Is there a motion to amend the minutes?

7 COMMISSIONER McCABE: So moved.

8 CHAIRMAN SCOTT: Is there a second?

9 COMMISSIONER O'CONNELL-DIAZ: Second.

10 CHAIRMAN SCOTT: It's been moved and seconded.

11 All in favor say aye.

12 COMMISSIONERS: Aye.

13 CHAIRMAN SCOTT: Any opposed?

14 (No response.)

15 CHAIRMAN SCOTT: The vote is five to nothing,
16 and the amendments are adopted.

17 Is there now a motion to approve the
18 minutes as amended?

19 ACTING COMMISSIONER DEL VALLE: So moved.

20 CHAIRMAN SCOTT: Is there a second?

21 COMMISSIONER O'CONNELL-DIAZ: Second.

22 CHAIRMAN SCOTT: It's been moved and seconded.

1 All in favor say aye.

2 COMMISSIONERS: Aye.

3 CHAIRMAN SCOTT: Any opposed?

4 (No response.)

5 CHAIRMAN SCOTT: The vote is five to nothing,
6 and the minutes from our January 29th Regular Open
7 Meeting, as amended, are approved.

8 Turning now to the Electric portion of
9 today's agenda, Item E-1 concerns a filing made by
10 Ameren to simplify its Net Metering Rider Language
11 and Methodology.

12 Staff recommends granting the
13 company's request by not suspending the filing.

14 Is there any discussion?

15 (No response.)

16 CHAIRMAN SCOTT: Is there a motion to not
17 suspend the filing?

18 COMMISSIONER COLGAN: So moved.

19 CHAIRMAN SCOTT: Is there a second?

20 COMMISSIONER O'CONNELL-DIAZ: Second.

21 CHAIRMAN SCOTT: It's been moved and seconded.

22 All in favor say aye.

1 COMMISSIONERS: Aye.

2 CHAIRMAN SCOTT: Any opposed?

3 (No response.)

4 CHAIRMAN SCOTT: The vote is five to nothing,
5 and the filing will not be suspended.

6 We will use this five-to-nothing vote
7 for the remainder of the Public Utility agenda,
8 unless otherwise noted.

9 Item E-2 concerns initiating a
10 Reconciliation Proceeding for Ameren over revenues
11 collected under its Hazardous Materials Adjustment
12 Clause Rider in 2012.

13 Staff recommends entry of an Order
14 commencing the proceeding.

15 Is there any discussion?

16 (No response.)

17 CHAIRMAN SCOTT: Are there any objections?

18 (No response.)

19 CHAIRMAN SCOTT: Hearing none, the Order is
20 entered.

21 Item E-3 is Docket Number 12-0450.

22 This is Ameren's Reconciliation Proceeding for

1 Revenues Collected under its Power Smart Pricing
2 Rider in 2011.

3 ALJ Von Qualen recommends entry of an
4 Order approving a reconciliation.

5 Is there any discussion?

6 (No response.)

7 CHAIRMAN SCOTT: Any objections?

8 (No response.)

9 CHAIRMAN SCOTT: Hearing none, the Order is
10 entered.

11 Items E-4 and E-5 can be taken
12 together. These items are Petitions by ComEd seeking
13 financing authority under Section 6-102 of the Public
14 Utilities Act and authorization for entering into an
15 affiliated company transaction under Section 7-101 of
16 the Public Utilities Act as part of that financing
17 arrangement.

18 In each case, ALJ Hilliard recommends
19 entry of an Order granting the requested relief.

20 Is there any discussion?

21 (No response.)

22 CHAIRMAN SCOTT: Any objections?

1 (No response.)

2 CHAIRMAN SCOTT: Hearing none, the Orders are
3 entered.

4 Item E-6 is Docket Numbers 11-0144 and
5 12-0365. This was initially Peter Fletcher's
6 Complaint against ComEd and was then consolidated
7 with an investigation initiated at the Commission's
8 direction as to how capacity charges are calculated
9 for distributed generation customers on realtime
10 pricing using that metering.

11 ALJ Haynes recommends entry of an
12 Order dismissing the Complaint and closing the
13 investigation.

14 Is there any discussion?

15 (No response.)

16 CHAIRMAN SCOTT: Are there any objections to
17 entering the Order?

18 (No response.)

19 CHAIRMAN SCOTT: Hearing none, the Order is
20 entered.

21 And I just want to thank Judge Haynes
22 for her work on this. It was a very

1 well-thought-out, very well-reasoned, very
2 well-written Order, great explanation of the issues
3 here.

4 And as we had those initial concerns
5 when the Fletcher case came through, it's very good
6 to see how those issues were dealt with by Judge
7 Haynes. So I just want to thank her for doing that.

8 COMMISSIONER COLGAN: I agree with that.

9 CHAIRMAN SCOTT: Commissioner Colgan?

10 COMMISSIONER COLGAN: And I think this is the
11 first time we had taken a look at this issue, and
12 it's probably going to become a bigger issue as time
13 goes on. And I think it was good that we took the
14 time to really take a close look at it and to come up
15 with the right issue.

16 The impact of distributed generation
17 and its relation to capacity I think is the really
18 important issue.

19 CHAIRMAN SCOTT: Anything further?

20 (No response.)

21 CHAIRMAN SCOTT: Thank you.

22 Item E-7 is Docket Number 11-0461.

1 This is Joel Harris' Complaint against ComEd.

2 We will be holding this item for
3 disposition to future Commission proceedings, but in
4 the meantime, there are some questions for ALJ Benn
5 if she's available.

6 JUDGE BENN: Yes.

7 CHAIRMAN SCOTT: Okay. Very good.

8 Commissioner McCabe? Good morning.

9 COMMISSIONER McCABE: Sure.

10 The first question was the legal basis
11 for your ruling that complainant is only entitled to
12 damages dating back two years.

13 JUDGE BENN: Okay. The basis for ruling was
14 just based on the facts that were entered into
15 evidence in the record at the time.

16 The record showed that Mr. Harris
17 complained about his meter, but he didn't offer any
18 specific evidence of when that was. He just made a
19 reference to "over the years" and then never offered
20 specifically any pinpointing date when he discovered
21 his meter was malfunctioning.

22 Further, I think the facts showed that

1 the -- he filed an informal complaint on January 4th,
2 2011, and that after complaining informally, ComEd
3 gave him a refund of \$597.49, I believe, on 3-30-11,
4 and he did cash that check, acknowledging that they
5 had gone back the two years to calculate what the
6 refund amount would be.

7 And then, further, looking at
8 Section 410.110, which the complainant cited as far
9 as it pertains to meter records being retained, I
10 guess it says they must be retained not less than
11 three years.

12 So this overall complaint was about
13 the complainant recovering damages or a refund of
14 20 years or more because he wanted to be refunded
15 based on his date of ownership going forward.

16 COMMISSIONER McCABE: But under Section 9252.1,
17 it doesn't set a limit for how far back damages can
18 go?

19 JUDGE BENN: No. It says two years from the
20 date the complaint is filed.

21 COMMISSIONER McCABE: That's when the
22 complainant has to --

1 JUDGE BENN: File.

2 COMMISSIONER McCABE: -- file?

3 JUDGE BENN: He has two years to file. And
4 then typically what happens is the utility company
5 goes back and gives a refund for the two years
6 preceding the filing of the complaint. I've often
7 had them testify to not being able to provide records
8 or providing records only going back two years.

9 COMMISSIONER McCABE: Okay. And in the course
10 of the docket, did you find ComEd's assertion at the
11 hearing that the meter in question was not
12 malfunctioning to be a valid, reliable assertion?

13 JUDGE BENN: I just went with what the records
14 showed, which was that they tested the meter
15 improperly initially, and then the further testing on
16 April 2011 showed the meter was tested correctly.

17 There also was testimony in the
18 records that showed that the meter was sealed. And
19 the physical meter was presented into evidence.

20 So I didn't specifically find their --
21 I didn't see where they asserted specifically that
22 the meter was valid. But I did enter the meter into

1 evidence, indicating that it was sealed.

2 COMMISSIONER O'CONNELL-DIAZ: Judge Benn,
3 didn't the meter test within the Commission standards
4 as set forth in the testimony of the Commonwealth
5 Edison witness that actually tested the actual
6 meter --

7 JUDGE BENN: Yes.

8 COMMISSIONER O'CONNELL-DIAZ: -- brought to the
9 shop?

10 JUDGE BENN: Yes, the second time, it tested
11 within guidelines. That's what I believe the records
12 show.

13 COMMISSIONER McCABE: Okay. And do you have
14 any information indicating why ComEd waited until
15 January 2012 to claim the meter was not
16 malfunctioning when the test result they submitted
17 was dated April 2011?

18 JUDGE BENN: No, nothing other than the fact
19 that the evidentiary hearing was held in January 2012
20 and that they wouldn't have had a reason to assert
21 anything before the evidentiary hearing.

22 COMMISSIONER McCABE: Okay. And last, the

1 complainant's request for a new ALJ cited five
2 reasons, one of which was ComEd Attorney Mark
3 Goldstein's inability to schedule a hearing for
4 several months.

5 I'm just curious how often hearings
6 don't get scheduled because the company attorney
7 isn't available for several months.

8 JUDGE BENN: I can't speak to the specific
9 instance in this docket, because the docket was
10 reassigned to me. So I'm not sure about the
11 scheduling prior to when I received it.

12 But in general, the practice of the
13 ALJs that I understand is that we try to accommodate
14 both parties. And, oftentimes, there are several
15 dockets in place with one company, and we try not to
16 have them conflict. So that's the only thing I can
17 really speak to.

18 COMMISSIONER McCABE: Okay.

19 Is there anything else?

20 CHAIRMAN SCOTT: I've got two quick questions,
21 Judge. Thanks.

22 The first one is -- and they're just

1 kind of following up to the questions that the other
2 Commissioners asked you -- that Mr. Harris, the
3 complainant, he testified, didn't he, that his own
4 calculation was that he would be owed I think it was
5 \$21,644 going back. So he actually testified to
6 that, didn't he?

7 JUDGE BENN: Yes. Yes, he did.

8 CHAIRMAN SCOTT: Did he provide any other
9 documentation or anything from that or show you his
10 method of calculation or anything of that nature?

11 JUDGE BENN: No. No, he did not.

12 CHAIRMAN SCOTT: And did the company -- Was it
13 anywhere in the testimony the company saying why they
14 paid two years of Mr. Harris' claim when they think
15 their meter wasn't faulty in the first place?

16 JUDGE BENN: They -- I guess what I recall from
17 the record is once he complained informally and they
18 went back and pulled the meter, the second testing
19 indicated that there was an improper measurement, or
20 their first test was an improper measurement, and it
21 was discovered in the second testing. And that's
22 when they went back and gave him the refund.

1 They gave him the refund March 30th.
2 So I believe the testing, the initial testing
3 happened after that, and then there was another test
4 in April after -- just before the formal complaint
5 was filed.

6 CHAIRMAN SCOTT: And any reason that they gave
7 why they only calculated back for two years?

8 JUDGE BENN: The reason I believe that was
9 given is that that's the records that they had
10 maintained at the time.

11 CHAIRMAN SCOTT: Okay.

12 JUDGE BENN: And that's as far back as they
13 could go.

14 CHAIRMAN SCOTT: Anybody else? Any other
15 questions?

16 Commission O'Connell-Diaz?

17 COMMISSIONER O'CONNELL-DIAZ: Yes. Judge Benn,
18 I have read through the record and the evidence that
19 was adduced throughout this proceeding. And kind of
20 the long and the short of it is that the company,
21 when the field test was done, it was done based on a
22 percentage basis as opposed to a watts-hour basis,

1 which is the required reading that they do in the
2 shop.

3 And once it was discovered -- When
4 they pulled the meter and brought the meter into the
5 shop, that's when they discovered that there was a
6 misread by the field test; correct?

7 JUDGE BENN: Yes.

8 COMMISSIONER O'CONNELL-DIAZ: And, in fact,
9 that there was no malfunctioning meter in this
10 particular complaint. Is that --

11 JUDGE BENN: Yes. That's what I understand.

12 COMMISSIONER O'CONNELL-DIAZ: So the 500
13 and whatever the amount is that was given to -- and
14 following up on the Chairman's question -- it seems
15 like it was in the spirit of compromise, because, in
16 fact, there was no faulty metering?

17 JUDGE BENN: Yes.

18 COMMISSIONER O'CONNELL-DIAZ: And, furthermore,
19 if you look at the billing for this account, which is
20 evidenced on Exhibit No. 6, you see the billing for
21 the meter that was -- before the meter was taken out
22 and removed, and the billing for after the new meter

1 is in. And relatively speaking, there's no
2 abnormalities in those amounts. They're pretty kind
3 of consistent. So that would also buttress the fact
4 that there was no faulty meter situation here?

5 JUDGE BENN: Yes, that's correct. Actually --
6 And ComEd, I believe, testified to that, as well.

7 COMMISSIONER O'CONNELL-DIAZ: And then
8 furthermore, in the transcript that's the
9 January 11th, Page 42, Lines -- starting at Line 10,
10 the complainant testifies that, "I would only suggest
11 that my case is predicated on ComEd's refund and
12 their admittance at this point in time that the meter
13 was inaccurate. Now, as it turns out, based on the
14 expert's examination that the meter is inaccurate, I
15 don't have much of a case, and I would only say that
16 this -- we wouldn't even be sitting here if ComEd had
17 told me a test had been conducted on that meter and
18 found to be accurate. So that was kind of a -- a
19 misstep that created the whole brouhaha."

20 And I think this goes to Commissioner
21 McCabe's question about the length of time that, once
22 they understood that there was an inaccuracy, that

1 that was not communicated to the complainant, which
2 is problematic, to say the least.

3 JUDGE BENN: Okay.

4 COMMISSIONER O'CONNELL-DIAZ: And we went
5 through this hearing process, when, in fact, had that
6 been explained, you know, I think the complainant
7 would have been satisfied with that he did not have
8 an inaccurate billing.

9 JUDGE BENN: Okay.

10 COMMISSIONER O'CONNELL-DIAZ: And he actually
11 was enriched by \$597, because there was no inaccurate
12 reading.

13 JUDGE BENN: Mmm-hmm. I can agree with that.

14 COMMISSIONER O'CONNELL-DIAZ: I just want to
15 understand the case, because it's kind of -- you know
16 -- these complaint cases are confusing, to say the
17 least. And I'm not suggesting that you haven't done
18 a good job, but I needed to understand that.

19 JUDGE BENN: I would agree with your
20 understanding.

21 COMMISSIONER O'CONNELL-DIAZ: So we don't have
22 a meter situation where there is an inaccurate meter?

1 JUDGE BENN: No.

2 COMMISSIONER O'CONNELL-DIAZ: There was an
3 inaccurate reading in the field?

4 JUDGE BENN: Yes. Correct. With a wrong --
5 incorrect measurement.

6 COMMISSIONER O'CONNELL-DIAZ: Correct. They
7 were using a percentage basis as opposed to a
8 watts-hour basis.

9 JUDGE BENN: Yes.

10 COMMISSIONER O'CONNELL-DIAZ: Thank you.

11 CHAIRMAN SCOTT: Okay. Thank you, Judge.

12 JUDGE BENN: Thank you.

13 CHAIRMAN SCOTT: As I mentioned, this item will
14 be held for disposition at a future Commission
15 proceeding.

16 Items E-8 and E-9 can be taken
17 together. These items are customer complaints
18 against ComEd. In each case, the parties have
19 apparently settled their differences and have filed a
20 Joint Motion to Dismiss, which the ALJ recommends we
21 grant.

22 Is there any discussion?

1 (No response.)

2 CHAIRMAN SCOTT: Are there any objections?

3 (No response.)

4 CHAIRMAN SCOTT: Hearing none, the Joint
5 Motions to Dismiss are granted.

6 Item E-10 is Docket Number 12-0484.

7 This is ComEd's Petition for the Approval of Tariffs
8 Implementing the Company's Peak Time Rebate Program.

9 ALJ Haynes recommends entry of an
10 Interim Order approving the Program and leaving
11 certain issues to be addressed through a workshop
12 process.

13 I have some revisions to introduce
14 here. My revisions adopt the CUB, City proposal to
15 have ComEd's PTR Program enrollment offered
16 year-round, in contrast to the October-to-April
17 enrollment window proposed by ComEd. The revisions
18 recognize that offering Program enrollment during
19 summer months may be necessary to maximize PTR
20 Program participation even if customers may not be
21 able to receive Peak Time Rebates in that particular
22 summer, but the revisions do maintain support of

1 ComEd's proposal for further research into the issue.

2 I would appreciate your support on
3 these revisions, which were also modified by
4 Commissioner McCabe, who sent around revisions to the
5 revisions, and I would move for the revisions'
6 adoption.

7 ACTING COMMISSIONER DEL VALLE: So moved.

8 CHAIRMAN SCOTT: Is there a second?

9 COMMISSIONER COLGAN: Second.

10 CHAIRMAN SCOTT: It's been moved and seconded.

11 Discussion of these revisions?

12 COMMISSIONER O'CONNELL-DIAZ: Mr. Chairman,
13 could you just explain to me? So what your revisions
14 do is they actually mandate a process, but then they
15 also call for some fluidity in developing a new
16 process? I'm just not clear.

17 CHAIRMAN SCOTT: Well, they mandate the
18 year-round enrollment period --

19 COMMISSIONER O'CONNELL-DIAZ: Right.

20 CHAIRMAN SCOTT: -- as opposed to a six-month
21 enrollment period. But then because this is all
22 going to be studied, going on, ComEd has recommended

1 doing some further research to see if the assumptions
2 that people are making that you see in the record,
3 people are making assumptions about how customers are
4 going to react to these things, but we don't really
5 know exactly how they're going to react. And so the
6 revisions would allow for ComEd's provision to do
7 some further research into the area, which they could
8 then bring back in a subsequent proceeding.

9 COMMISSIONER O'CONNELL-DIAZ: Okay. That's
10 fine, as long as that we're not going to be stuck in
11 a hole if we're faced with the evidence that as these
12 programs roll out that we can't change that in
13 accordance with what the actual results are --

14 CHAIRMAN SCOTT: Right.

15 COMMISSIONER O'CONNELL-DIAZ: -- which is
16 really important as we move through these -- all
17 these new type of programs that we're doing.

18 Thank you.

19 CHAIRMAN SCOTT: That's fine. That's certainly
20 not my intent to put us in that kind of a hole.

21 Further discussion on the revisions?

22 (No response.)

1 CHAIRMAN SCOTT: They have been moved and
2 seconded.

3 All in favor say aye.

4 COMMISSIONERS: Aye.

5 CHAIRMAN SCOTT: Any opposed?

6 (No response.)

7 CHAIRMAN SCOTT: The vote is five to nothing,
8 and the revisions are adopted.

9 Are there any further revisions or any
10 further discussion on this matter?

11 (No response.)

12 CHAIRMAN SCOTT: Is there a motion to enter the
13 Order as revised?

14 COMMISSIONER COLGAN: So moved.

15 CHAIRMAN SCOTT: It's been moved. Is there a
16 second?

17 ACTING COMMISSIONER DEL VALLE: Second.

18 CHAIRMAN SCOTT: It's been moved and seconded.

19 All in favor say aye.

20 COMMISSIONERS: Aye.

21 CHAIRMAN SCOTT: Any opposed?

22 (No response.)

1 CHAIRMAN SCOTT: The vote is five to nothing,
2 and the Order, as revised, is entered.

3 Again, thank you to Judge Haynes on
4 this Order, as well, on a fairly complicated subject.

5 Turning now to Natural Gas, Item G-1
6 concerns initiating a Rulemaking Proceeding for Title
7 83 Part 590 of the Administrative Code for adopting
8 federally-mandated pipeline safety standards.

9 Staff recommends entry of a First
10 Notice Order initiating the proceeding.

11 Is there any discussion?

12 (No response.)

13 CHAIRMAN SCOTT: Any objections?

14 (No response.)

15 CHAIRMAN SCOTT: Hearing none, the Order is
16 entered.

17 Item G-2 is Docket Number 11-0732.

18 This is Loni Slothower's Complaint against Nicor.

19 The parties have apparently settled their differences
20 and have brought a Joint Motion to Dismiss, which the
21 ALJ recommends we grant.

22 Is there any discussion?

1 (No response.)

2 CHAIRMAN SCOTT: Any objections?

3 (No response.)

4 CHAIRMAN SCOTT: Hearing none, the Joint Motion
5 to Dismiss is granted.

6 Moving on to Telecommunications, Items
7 T-1 and T-2 can be taken together. These items are
8 Applications for Certificates of Service Authority
9 under Section 13-404 and/or 13-405 of the Public
10 Utilities Act.

11 In each case, ALJ Benn recommends
12 entry of an Order granting the requested
13 Certificates.

14 Is there any discussion?

15 (No response.)

16 CHAIRMAN SCOTT: Any objections?

17 (No response.)

18 CHAIRMAN SCOTT: Hearing none, the Orders are
19 entered.

20 Item T-3 is Docket Number 13-0022.

21 This is Wayne County's Petition for the Approval of
22 its 9-1-1 Emergency Telephone Number System.

1 ALJ Haynes recommends entry of an
2 Order granting the Petition.

3 Is there any discussion?

4 (No response.)

5 CHAIRMAN SCOTT: Any objections?

6 (No response.)

7 CHAIRMAN SCOTT: Hearing none, the Order is
8 entered.

9 Item T-4 is Docket Number 12-0647.
10 This is a Joint Petition for the Approval of an
11 Amendment to an Interconnection Agreement between
12 AT&T and tw telecom of illinois.

13 ALJ Baker recommends entry of an Order
14 approving the Amendment.

15 Is there any discussion?

16 (No response.)

17 CHAIRMAN SCOTT: Any objections?

18 (No response.)

19 CHAIRMAN SCOTT: Hearing none, the Order is
20 entered.

21 Item T-5 is Docket Number 12-0662.

22 This is a Joint Petition for the Approval of a

1 Negotiated Resale Agreement between CenturyLink and
2 Spectrotel.

3 ALJ Baker recommends granting the
4 Petitioner's request to withdraw the Petition.

5 Is there any discussion?

6 (No response.)

7 CHAIRMAN SCOTT: Any objections?

8 (No response.)

9 CHAIRMAN SCOTT: Hearing none, the Petition is
10 withdrawn.

11 Item T-6 is Docket Numbers 11-0210 and
12 11-0211 (Consolidated). This is a Petition filed by
13 Geneseo Telephone Company, Cambridge Telephone
14 Company, and Henry County Telephone Company to update
15 the Illinois Universal Service Fund and to implement
16 Intrastate Switched Access Charge Reform.

17 We will hold disposition of this
18 matter for a future Commission proceeding.

19 We also have an oral argument request
20 from the Petitioners to consider. And ALJ Jones
21 recommends denying that oral argument request.

22 Is there any discussion regarding the

1 oral argument request?

2 (No response.)

3 CHAIRMAN SCOTT: Are there any objections to
4 denying the oral argument request?

5 (No response.)

6 CHAIRMAN SCOTT: Hearing none, the oral
7 argument request is denied.

8 On to Water and Sewer, Items W --

9 COMMISSIONER O'CONNELL-DIAZ: Excuse me. Mr.
10 Chairman, I have a couple of questions for Judge
11 Jones on this Geneseo matter. I'm sorry.

12 CHAIRMAN SCOTT: Sure. No, I'm sorry. That's
13 fine. Go right ahead.

14 Judge?

15 COMMISSIONER O'CONNELL-DIAZ: Thank you, Judge
16 Jones, for your work on this Order.

17 Could you just run through the Geneseo
18 proposal and your conclusion relative to adding what
19 they wish to the list of required items for the USF
20 funding access to broadband?

21 JUDGE JONES: Thank you, Commissioner. I'll be
22 brief. The Geneseo Companies are seeking to add

1 access to broadband, as you indicated, to the list of
2 supported services in Illinois.

3 They basically made two arguments.

4 One was that the recent so-called FCC
5 Transformational Order mandates that this Commission
6 add access to broadband as a supported service. The
7 second argument is that even if the FCC Order does
8 not specifically require that, that it should be
9 added anyway as an appropriate update to the list of
10 supported services under Illinois law.

11 The Proposed Order would essentially
12 agree with Staff AT&T and the IITA that the FCC's
13 Order, while endorsing broadband in many ways, did
14 not add it as a supported service to the list of
15 supported services. They went a different direction
16 with that and did not change the underlying
17 definitions of supported services that would be
18 relevant, and, as such, do not provide any sort of
19 requirement that the Commission do the same.

20 The other piece of --

21 COMMISSIONER O'CONNELL-DIAZ: And, Judge Jones,
22 just so that I understand it, so that if it was added

1 to the list for USF recovery, then that would be a
2 subsidization of those costs that these carriers
3 would incur to provision those -- that type of a
4 product to its customers; correct?

5 JUDGE JONES: That's correct, Commissioner.

6 And then the second piece of that, the
7 Proposed Order would find that without the FCC having
8 made such a requirement, that there is not sufficient
9 basis, at least in this proceeding and under Illinois
10 law, for the addition of that service as a supported
11 service.

12 Again, AT&T staff and IITA contend
13 that it would not be -- not the time to add that
14 service. And they make a number of arguments. Some
15 relate to the definition of broadband, as opposed to
16 supported services in Illinois law. And in
17 connection with that, they make the argument that
18 there is simply not a sufficient relationship between
19 the Geneseo proposal and the way it would work and
20 the definitions of this additional supported service
21 on the one hand and the services that are supported
22 and the services that would be provided by means of

1 that addition on the other.

2 I will not elaborate on that at this
3 time, unless you would like me to. But that is
4 essentially the issues there.

5 Now, there were some further issues
6 about -- that relate in part to the cost of adding
7 broadband. And one thing that the staff at AT&T
8 pointed out was that the approach that the FCC took
9 by essentially requiring that additional support be
10 used, at least in part, to support such services was
11 through upgrades to voice telephony equipment and not
12 to broadband standalone. And what the FCC said in
13 that regard, among other things -- it's a long
14 Order -- was that doing it that way would not
15 increase the overall size of the fund.

16 So the focus was on making
17 improvements to the network, to the system, which
18 were broadband capable, without being broadband
19 specific.

20 There were additional disputes over
21 the affordable rate element of the support formula
22 and the economic cost element of the support formula

1 that was in the Illinois Statute that has always
2 applied then to calculate the support, if any, that
3 would be due in any given circumstance.

4 COMMISSIONER O'CONNELL-DIAZ: Well, you know, I
5 understand your ruling in this relative to the legal
6 nature of it, but from a policy perspective and as
7 stated in the FCC Order, Universal Service and
8 Intercarrier Compensation System are based on
9 decades-old assumptions that fail to reflect today's
10 networks.

11 The vital components for our
12 communities, you know, everyone has heard me through
13 the years rant and rant and rant about not having
14 high-speed internet. I do now have high-speed
15 internet at my home. But there is --

16 CHAIRMAN SCOTT: Good.

17 COMMISSIONER O'CONNELL-DIAZ: Well, it came
18 last week. So try living your life in today's world,
19 all you city folks, where you cannot go to your
20 Clerk's office and do any kind of business with your
21 county because you don't have high-speed internet.
22 Your children can't do their homework.

1 So when I see the dancing around this
2 issue by the FCC in its Order where it kind of puts
3 all of this stuff out there about why we should be
4 doing it, but then, of course, we have the legal
5 construct that doesn't allow us to.

6 Additionally, Illinois has made it a
7 charge that we would have broadband to all of our
8 citizens. And this Commission has been active on
9 that front. We've had some merger situations in the
10 Verizon, now Frontier, service territory that people
11 are now enjoying high-speed internet that had no
12 hopes of getting it from Verizon. But now that we've
13 required Frontier to provide those services, people
14 in those communities are getting those 21st century
15 services.

16 So to make my rant short, I just --
17 you know -- I agree with the legal underpinnings of
18 how you have constructed this Order, Judge Jones, but
19 I think that there's much that we need to do for
20 those that are underserved in the state of Illinois.

21 And this is not helping move the ball
22 forward with regard to providing those services to

1 those that are not getting those services.

2 And so I know that GCHC suggested some
3 sort of a workshop process or something of that
4 nature; but maybe that's something that we can think
5 about so that we can finally say that people that
6 live in Illinois have access to these services and
7 everyone has access to these services if they so
8 choose.

9 That is not the case today. It is --
10 to me, the digital divide is becoming deeper and
11 deeper as we move forward for some and backwards for
12 others.

13 So as we look at this Order -- I know
14 we're not voting on it today -- but maybe there's a
15 way that we can work with this. USF funding has been
16 a very large issue for many a year. It has provided
17 lots of subsidization in manners that might raise
18 eyebrows sometimes.

19 So if we're going to be subsidizing, I
20 think we need to be putting that money in the right
21 place, and that is to assist in bringing all of
22 Illinois' citizens into the 21st century.

1 It's time. We don't need to go
2 backwards. And I'll just end there.

3 Thank you.

4 CHAIRMAN SCOTT: Thank you, Commissioner.

5 Any further discussion?

6 (No response.)

7 CHAIRMAN SCOTT: Thank you, Judge. We
8 appreciate it.

9 JUDGE JONES: Thank you.

10 CHAIRMAN SCOTT: On to Water and Sewer. Item
11 W-1 is a Filing by Holiday Hills Utility seeking an
12 increase in rates pursuant to the Simplified Rate
13 Case Procedure.

14 Staff recommends granting the
15 company's request by not suspending the Filing.

16 Is there any discussion?

17 (No response.)

18 CHAIRMAN SCOTT: Are there any objections to
19 not suspending the Filing?

20 (No response.)

21 CHAIRMAN SCOTT: Hearing none, the Filing will
22 not be suspended.

1 Item W-2 is Docket Number 12-0487.
2 This is Forestview Utility Corporation's Petition for
3 the Approval of an Affiliated Interest Services
4 Agreement under Section 7-101 of the Public Utilities
5 Act.

6 Judge Wallace?

7 JUDGE WALLACE: I was just going to say that we
8 need to insert a couple of words in Finding 3. It
9 would read, "The Services Agreement attached to the
10 Petition is in the public interest and should be
11 approved."

12 We didn't circulate anything. We were
13 just going to add it when we send it down to the
14 Clerk's Office.

15 CHAIRMAN SCOTT: Okay. Did everybody --
16 Commissioner McCabe, Commissioner O'Connell-Diaz, did
17 you hear that change?

18 COMMISSIONER O'CONNELL-DIAZ: Yes.

19 CHAIRMAN SCOTT: ALJ Benn recommends entry of
20 the Order proving the agreement with the two caveats
21 that Judge Wallace has inserted there.

22 Is there any discussion on that?

1 (No response.)

2 CHAIRMAN SCOTT: Any objections?

3 (No response.)

4 CHAIRMAN SCOTT: Hearing none, the Order is
5 entered.

6 Thank you, Judge.

7 Item W-3 is Docket Numbers 12-0603 and
8 12-0604 (Consolidated). This is a rate case for
9 Apple Canyon Utility Company and Lake Wildwood
10 Utilities Corporation. Before us today is a
11 Resuspension Order suspending these filings for an
12 additional six months for further investigation.

13 Is there any discussion?

14 (No response.)

15 CHAIRMAN SCOTT: Any objections?

16 (No response.)

17 CHAIRMAN SCOTT: Hearing none, the Resuspension
18 Order is entered.

19 We have one Miscellaneous item up for
20 consideration today. Item M-1 is Docket Number
21 12-0403. This item is a Rulemaking Proceeding for
22 Title 83 Part 300 of the Administrative Code

1 concerning an expedited procedure for property rights
2 acquisition.

3 ALJ Jorgenson recommends entry of an
4 Order adopting the proposed amendments with an
5 effective date of March 1st, 2013.

6 Is there any discussion?

7 (No response.)

8 CHAIRMAN SCOTT: Are there any objections?

9 (No response.)

10 CHAIRMAN SCOTT: Hearing none, the Order is
11 entered.

12 We have one Petition for Rehearing to
13 consider today. Item PR-1 is Docket Number 10-0598.
14 This is Harold Savitz and the Manors of Highland Park
15 Condominium Association's Complaint against ComEd and
16 Constellation.

17 Mr. Savitz has filed a Petition for
18 Rehearing after a recent dismissal of this matter.

19 ALJ Haynes recommends that the
20 Petition for Rehearing be denied.

21 Is there any discussion?

22 (No response.)

1 CHAIRMAN SCOTT: Are there any objections to
2 denying rehearing?

3 (No response.)

4 CHAIRMAN SCOTT: Hearing none, the Petition for
5 Rehearing is denied.

6 Judge Wallace, are there any other
7 matters to come before the Commission today?

8 JUDGE WALLACE: No. That's all.

9 CHAIRMAN SCOTT: Thank you, sir.

10 JUDGE WALLACE: I hope you guys make it back.

11 CHAIRMAN SCOTT: Yes.

12 Hearing none, this meeting stands
13 adjourned.

14 Thank you, everyone.

15 HEARING CONCLUDED AT 11:07 A.M.

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